

REMARKS

Claims 1-14 and 20 are pending.

Claims 1-14 and 20 are rejected.

Claims 2-3 and 15-19 are cancelled.

Claims 1 and 20 are amended to claim the format of the alert message used by the discriminator to distinguish alert messages from other data. Firstly, the Applicants have amended the claims to claim that the alert message is transmitted in the form of data packets in an MPEG-2 data stream. Specifically, data packets are distinguished from each other by using packet identifiers (PIDS, see page 6, page 6-10, page 7, lines 24-36, and in other places). Additionally, the geographic code information then resides in the user data fields of such MPEG-2 packets (see page 6, lines 6-10) where user data fields reside in the header of such packets.

Claims 2-3 are also incorporated into Claim 1.

No new matter is presented.

ARGUMENTS**35 U.S.C. 101 Rejection of Claims 1-14**

The Examiner previously rejected claims 1-14 under 35 U.S.C. 101 as not being patentable subject matter by citing that the claimed components of Claim 1 do not include any functional structure of a machine. Specifically, the Examiner finds that the discriminator and warning device are to be considered to be a program per se which is not to be one of the categories of statutory subject matter.

In the Final Rejection mailed on February 18, 2009, the Examiner further writes in response to the Applicants' to Fig. 2 and the associated text that the discriminator and warning device are described being physical components that, "a machine does not inherently comprise hardware structure". The Examiner then supports this position by pointing to the specification that states, "It should be

understood that the elements shown in the FIGS may be implemented in various forms of hardware, software, or combinations thereof,” (specification, page 4, lines 24-25). Hence, the Examiner concludes that because the various embodiments of the invention can be implemented as either a combination of hardware/software or as software, that Claim 1 represents an embodiment implemented in software.

It should be noted that Claim 1 which is written in apparatus form would cover a hardware embodiment of the present invention. Moreover, such an apparatus embodiment is supported in the structure on FIG. 2 where such an apparatus is embodied in a physical form. In order to further support this view, the Applicants have claimed specific operations to the alert device by incorporating Claims 2 and 3 into Claim 1.

Alternatively, if one were to except the Examiner’s view (which the Applicants do not) that the Claim 1 is effectively software, the claim would still be patentable because one would have to consider such claim elements as function descriptive material. The only open question, then for patentability, is whether such function descriptive material is embodied in a physical form (see MPEP 2106.01). Presumably, a claimed apparatus with the claimed alert warning device would tangibly embody the associated “computer code” which would permit the data structure’s functionality to be realized which would meet the requirements put forth for 35 U.S.C. 101. Applicants therefore request that the Examiner remove this rejection to Claims 1-14.

35 U.S.C. § 102(e) Rejection of Claims 1-10, 14 and 20.

The Office Action rejected Claims 1-10, 14, and 20 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,710,715B2 to Deeds (“Deeds”). Applicants disagree with this ground of rejection.

Claims 1 and 15, as amended, claim a data format which uses an MPEG-2 transport stream. The Deeds reference is different than the signal format used in the claimed invention, as the signal format uses is RF band reserved for VHF FM (radio) where the composition of the SAME message is disclosed on col. 2 lines, 27-56; this is not an MPEG-2 data format.

Moreover, the present invention of Claim 1 and 20 utilize two different aspects of a data packet to whether the alert message is present. This is accomplished by using the packet identifier (to determine if a data packet represents auxiliary information) and user data fields in the header of the data packet (to look for geographic codes) to determine the contents of such an alert message. Such a dual fold approach is neither disclosed nor suggested in Deeds and the other art of record.

For the differences listed above, Applicants assert that Claims 1 and 20 are patentable over the cited art of record. In addition, Claims 2-10 and 14 are patentable as such claims depend on allowable Claim 1.

35 U.S.C. § 103(a) Rejection of Claim 12

The Office Action rejected claim 12 under 35 U.S.C. § 103(a) as being obvious over Deeds. As claim 12 depends from independent claim 1, Applicants submit that these claims are allowable for the reasons discussed with respect to independent claim 1. Therefore, Applicants submit that the rejection of claim 12 be withdrawn.

35 U.S.C. § 103(a) Rejection of Claim 11

The Office Action rejected claim 11 under 35 U.S.C. § 103(a) as being obvious over Deeds in view of U.S. Patent Application Publication No. 2003/0121036 to Lock et al. ("Lock"). As claim 11 depends from independent claim 1, Applicants submit that these claims are allowable for the reasons discussed with respect to independent claim 1. Therefore, Applicants submit that the rejection of claim 11 be withdrawn.

35 U.S.C. § 103(a) Rejection of Claim 13

The Office Action rejected claim 13 under 35 U.S.C. § 103(a) as being obvious over Deeds in view of U.S. Patent No. 5,940,776 to Baron ("Baron"). As claim 13 depends from independent claim 1, Applicants submit that these claims are

allowable for the reasons discussed with respect to independent claim 1. Therefore, Applicants submit that the rejection of claim 13 be withdrawn.

Having fully addressed the Examiner's objections and rejections, it is believed that this patent application is in condition for allowance. Accordingly, reconsideration and allowance are respectfully requested. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the Applicants' attorney at (609) 734-6809, so that a mutually convenient date and time for a telephonic interview may be scheduled.

Respectfully submitted,


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